

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: V. Q.

From: Laura Adler, Water Resources Coordinator

Action ☒

Discussion ☐

Date: January 6, 2015

Information ☐

Subject: Authorization of Programmatic Maintenance Agreement with Minnehaha Creek Watershed District

Action Requested:

Authorize Programmatic Maintenance Agreement with Minnehaha Creek Watershed District

Information / Background:

Minnehaha Creek Watershed District (MCWD) is an organization with regulatory responsibilities for water resources. City infrastructure projects often require permits from the MCWD. As a part of these permits, MCWD often requires the installation of some type of stormwater feature, such as raingardens, wetland buffers, stormwater ponds, or other stormwater pollution prevention devices. MCWD requires the city to execute a maintenance declaration as a condition of each permit. Maintenance declarations are site-specific and require City Council approval. This process has caused a delay in the issuance of permits in the past.

Although the maintenance declarations are site-specific, the requirements contained within them are similar. The MCWD encourages cities to establish citywide programmatic maintenance agreements that describe the maintenance practices the city will use on all the items required under a MCWD permit. This programmatic maintenance agreement is separate from the Memorandum of Understanding the city and MCWD authorized by the City Council on August 19, 2014. Under the permit issued for the underground stormwater structure at Acres DuBois, the city is required to execute a programmatic maintenance agreement with MCWD by January 13, 2015.

The attached agreement aligns with the city's maintenance practices, the requirements of our state stormwater permit, and industry best management practices. The city attorney and city staff from the Engineering and Public Works departments reviewed and are satisfied with the agreement. Staff recommends approval of the agreement.

Attachment:

Programmatic Maintenance Agreement

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PROGRAMMATIC MAINTENANCE AGREEMENT
Stormwater Management Facilities, Waterbody Crossings & Structures, Wetland Buffers and
Shoreline & Streambank Stabilizations

Between the Minnehaha Creek Watershed District
and the City of Edina

This Maintenance Agreement (Agreement) is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and the City of Edina, an incorporated municipality and political subdivision of the State of Minnesota (CITY).

Recitals and Statement of Purpose

WHEREAS pursuant to Minnesota Statutes § 103D.345, the MCWD has adopted and implements the Stormwater Management Rule, Wetland Protection Rule, the Waterbody Crossings & Structures Rule and the Shoreline & Streambank Stabilization Rule;

WHEREAS under the rules, certain land development activity triggers a requirement that the landowner record a declaration establishing the landowner's perpetual obligations to inspect and maintain stormwater-management facilities, to protect undisturbed buffer adjacent to wetland, to inspect and maintain waterbody crossings and structures to ensure that the hydraulic and navigational capacity of the associated waterbody are maintained in accordance with approved plans and to protect shoreline or streambank vegetation;

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the MCWD;

WHEREAS the City of Edina is subject to Municipal Separate Storm Sewer System (MS4) Permit that requires inspection and maintenance of stormwater infrastructure, and commission of best management practices for pollution prevention; and

WHEREAS the City of Edina has a Comprehensive Water Resource Management Plan that is periodically updated and reviewed by MCWD that spells out policy for the commission and maintenance of stormwater infrastructure and best management practices for pollution prevention; and

WHEREAS the City of Edina from time to time is subject to stormwater management, wetland buffer, waterbody crossings and structures and shoreline & streambank stabilization maintenance requirements pursuant to the terms of an MCWD permit; and

WHEREAS the parties concur that it is clearer and procedurally more efficient for the MCWD and the City of Edina to agree at this time on standard requirements for stormwater management, wetland buffer protection, waterbody crossings and structures maintenance and shoreline & streambank stabilizations, so that this Agreement may be incorporated into future permits as applicable.

THEREFORE IT IS AGREED as follows:

1. All features requiring maintenance under an MCWD permit shall be maintained in perpetuity in accordance with Exhibit A, Maintenance Plan & Schedule.

2. MCWD permits for specific projects may contain additional maintenance conditions in accordance with MCWD rules, as they may be amended from time to time.
3. The City of Edina will submit a copy of the Storm Water Pollution Prevention Plan annual report prepared under its Municipal Separate Storm Sewer System permit to the MCWD each year.
4. If City of Edina conveys into private ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the maintenance requirements of this Agreement; and (b) that recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder ensuring that the declaration will run with the land in perpetuity. If the City of Edina conveys into public ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this Agreement.
5. This Agreement may be amended only in a writing signed by the parties.
6. This Agreement is in force for five years from the date on which it has been fully executed and will renew automatically for five year terms unless terminated. Either party may terminate the Agreement on 30 days' written notice to the other. Any obligations vested in the City of Edina through incorporation into an issued permit before the effective date of termination will survive expiration.
7. The recitals are incorporated as a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

MINNEHAHA CREEK WATERSHED DISTRICT

By _____ Date:
President, Board of Managers

APPROVED AS TO FORM and EXECUTION

By _____
Its Attorney

CITY OF Edina

By: _____ Date:
Its Mayor

By: _____ Date:
Its Administrator

APPROVED AS TO FORM and EXECUTION

By: _____
City Attorney

EXHIBIT A

MAINTENANCE PLAN & SCHEDULE

1. WETLAND BUFFER AREAS

- a. Buffer vegetation will not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities, or other actions to maintain or improve buffer quality, each as approved by MCWD staff in writing. Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface will be placed within a buffer without permission from MCWD. No fill, debris or other material will be excavated from or placed within a buffer.
- b. Permanent wetland buffer markers will be maintained in the locations shown on the approved site plan. Language shall indicate the purpose of the buffer, restrictions, and the name and phone number of the Minnehaha Creek Watershed District.

2. SHORELINE & STREAMBANK STABILIZATIONS

- a. The project area will be inspected at least annually and any erosion or structural problems observed will be corrected within 30 days of inspection to establish and maintain a naturalized, ecologically healthy streambank that is structurally stable and resistant to erosion. Streambank plantings will be replaced and seeded areas will be reseeded as necessary in the spring and fall of each year in accordance with the approved plan to maintain the ecological health and function of the shoreline. Removal of invasive species will occur on an ongoing basis. Weeds will be hand pulled or spot treated with aquatic formulations of herbicide according to instructions on the herbicide label. All planted and seeded areas will be maintained in perpetuity free from mowing or other vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures or any other alteration that impedes the function of the shoreline in protecting water quality, shading the riparian edge, moderating flow into any adjacent wetland or waterbody, or providing wildlife habitat.

3. WATERBODY CROSSINGS & STRUCTURES

- a. Crossings and structures in contact with the bed or bank of a waterbody will be inspected at least once a year and maintained in good repair in perpetuity to

ensure continuing adequate hydraulic and navigational capacity is retained in accordance with approved plans, to ensure no net increase in the flood stage beyond that achieved by the approved plans, to prevent adverse effects on water quality, changes to the existing flowline/gradient and increased scour, erosion or sedimentation, and to minimize the potential for obstruction of the waterbody.

4. STORMWATER FACILITIES

- a. **Stormwater retention and treatment basin(s).** Stormwater retention and treatment basin(s) and associated inlets and outlets must be visually inspected once per year and inspected for storage capacity at least once every five years to determine if the basin's retention and treatment characteristics are adequate and continue to perform per design. Sediment accumulation must be measured by a method accurate to within one vertical foot. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent of its original design volume. Based on this inspection, if the stormwater basin(s) is identified for sediment cleanout, the basin(s) will be restored to its original design contours and vegetation in disturbed areas restored within one year of the inspection date.
- b. **Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins will be inspected annually to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.
- c. **Vegetated swales.** Vegetated swales will remain free from mowing or other vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures or any other alteration that impedes the function of the vegetated swale.
- d. **Pervious pavement.** Pervious pavement will be inspected after at least one major storm per year and otherwise annually to ensure continuing performance per design. Pervious pavement will be maintained per manufacturer's specifications to ensure functionality as necessary.
- e. **Underground storage facilities.** Underground storage facilities will be inspected at least annually to ensure continuing performance per design. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of the original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be kept clear of any flow impediments.

- f. **Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes will be inspected two times per year for the first two years after installation, and then at intervals appropriate to the rate of sediment accumulation, but at least once a year. All sediment and debris will be removed as needed such that the stormwater facilities operate as designed and permitted.
- g. **Proprietary stormwater facilities.** Proprietary stormwater facilities will be inspected at least annually and maintained as specified or recommended by the manufacturer and/or installer.
- h. **Reporting.** The Declarant will submit to the MCWD annually a brief written report that describes stormwater facility maintenance activities performed under this declaration, including dates, locations of inspections and the maintenance activities performed.